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DE FACTO SCHOOL SEGREGATION.

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A WIDE RANGE OF ISSUES INVOLVED IN DE FACTO SCHOOL SEGREGATION ARE DISCUSSED IN THIS MONOGRAPH. A SECTION ON THE BACKGROUND AND NATURE OF THE PROBLEM DEALS WITH THE HISTORY OF SEGREGATION LAWS, RESTRICTIVE COVENANTS, RESIDENTIAL SEGREGATION, AND THE MANIPULATION OF PUPIL TRANSFERS AS AVOIDANCE MANEUVERS. ANOTHER SECTION DISCUSSES THE SOCIAL-PSYCHOLOGICAL ILLS OF SEGREGATION, THE TECHNIQUES OF TOKEN DESEGREGATION IN THE SOUTH, AND VARIOUS REASONS FOR WHITE NORTHERN RESISTANCE TO DESEGREGATION. SOME COURT CASES INVOLVING DE FACTO SEGREGATION ARE DETAILED AND INTERPRETED IN A THIRD SECTION. A FOURTH DESCRIBES VARIOUS METHODS OF ABOLISHING DE FACTO SCHOOL SEGREGATION WHERE THERE IS RESIDENTIAL SEGREGATION--DIVISION BY GRADES (PRINCETON PLAN), REZONING SCHOOL BOUNDARIES AND SCHOOL RELOCATION, AND VOLUNTARY AND COMPULSORY TRANSFERS. THE FINAL CHAPTER DEALS WITH EFFORTS TO ELIMINATE DE FACTO SEGREGATION, THROUGH BOYCOTTS AND PROTESTS, SCHOOL BOARD POLICIES, STATE LAWS AGAINST RACIALLY UNBALANCED SCHOOLS, AND COMPENSATORY AND ENRICHMENT PROGRAMS. THE AUTHOR CONCLUDES THAT DESPITE THE VARIETY OF MANIPULATIONS USED TO ACHIEVE SCHOOL DESEGREGATION THE ULTIMATE SOLUTION DEPENDS UPON RESIDENTIAL DESEGREGATION, WHICH IS AT THE HEART OF THE NATIONAL SEGREGATION PROBLEM. THIS DOCUMENT IS ALSO AVAILABLE FROM THE NATIONAL CONFERENCE OF CHRISTIANS AND JEWS, 43 WEST 57TH STREET, NEW YORK, NEW YORK 19, FOR $0.75. (NH)

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The National Conference of Christians and Jews

INTRODUCTION

Professor Arnold Rose is a distinguished sociologist and a leading authority on race relations in the United States. He is the recipient of the 1953 First Award in Social Science, American Association for the Advancement of Social Science. He has served on the faculty of Bennington College, Washington University in St. Louis, and is at present a Professor at the University of Minnesota. He is the author of many books and numerous papers in professional journals.

As a research associate of the Carnegie Corporation, he collaborated with Gunnar Myrdal in writing the famous study "An American Dilemma." This book has become a landmark in the struggle of the American Negro toward full equality and had great influence in preparing the way for the Supreme Court Decision of 1954. Some of Professor Rose's other books have had similar influence in developing enlightened attitudes on race relationships.

The National Conference is pleased to present this authoritative work on "De Facto School Segregation." We commend this study to all who would attempt to understand one of the most important problems of our times.

LEWIS WEBSTER JONES, *President*
National Conference of Christians and Jews

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DE FACTO SCHOOL SEGREGATION

I. Background and Nature of the Problem

School segregation in the Southern states has been maintained by state laws enacted in the 1880's and 1890's, as part of the repression of the Negro following the end of post-Civil War Reconstruction. These laws received U.S. Supreme Court sanction in the case of Plessy *vs.* Ferguson in 1896 under the principle of "separate but equal". That is, the Court said that states could separate the races provided they were given equal facilities. The Southern states never did provide anything like equal facilities, and so—in court case after case during the first five decades of the twentieth century—the Southern states were reordered to improve the education of Negro children.[1] After all of the conceivable specific ways of discriminating against Negro children in the schools were declared illegal, and the education of Negro children in the South remained substantially inferior to that of white children, the Supreme Court in the early 1950's re-examined the Plessy decision. Discrimination—that is, inequality of treatment by the state and local governments—had *already* been considered as illegal under the 14th Amendment; by the 1950's the Court was finally brought to consider that segregation *inevitably* involved discrimination. The trend of the Court's thinking was clear already by 1950: In the case of Sweatt *vs.* Painter it acknowledged that exclusion from the company of future professional colleagues was a form of discrimination, even though buildings, libraries, and teachers' pay were equalized. In 1954, in the case of Brown *vs.* Board of Education, the Court finally declared that segregation inevitably meant discrimination, and since discrimination was always recognized as illegal, so segregation must be illegal.[2] In the following year, the Court ordered the Southern school systems to desegregate "with all deliberate speed". The outcome is history:

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One by one the states with segregation laws have been abandoning them—a few without difficulty, most after a protracted struggle and only token compliance.

Little of the above applied directly to the North. By "South" we mean all the states having legalized slavery up to 1865, and by "North" we mean all other states. Thus, when we refer to North, it is intended to include all of the Western states as well as those of the historic North. Kansas, Arizona, and New Mexico had laws which made school segregation by local communities permissive, and some communities in these states did have ordinances requiring school segregation. The other Northern states gradually passed statutes or constitutional provisions prohibiting racial segregation, although some local school districts ignored them and made segregation a systematic policy. As late as 1953, some eleven counties in southern Illinois provided for Negro and white separate schools.[3] Most of the Northern states had "equal accommodations" laws which even made exclusion of Negro pupils by private schools of questionable legality. Before 1910, most of the Northern states had no public school segregation to speak of. There were individual instances of discrimination, but no systematic exclusion from neighborhoods, schools, or other institutions. This was a period in which the proportion of American Negroes living in the North never rose above seven per cent, and in no state accounted for more than one per cent of the total population.

But with the "Great Migration" that began after 1910, Southern Negroes greatly augmented the Negro population of the urban North. Their cultural standards were of the rural "peasant" South, and their poverty and ignorance exceeded even that of the peasants from rural Europe. They sought the areas of the city where rent was lowest, and the white population soon sought to force all of them into the poorest areas of the city as a means of avoiding the degrading contact with them. What is now forgotten is that,

at first, the Northern Negroes did not like to associate with the poor Southern Negroes any more than the whites did. But the whites did not distinguish between them, and forced the Northern Negroes—regardless of their income or cultural level—into the slums with the Southern migrants. Further, the children of the migrants, who grew to adulthood after 1930, were increasingly acculturated into Northern ways of living, and they too were held back in the Negro ghetto.

The techniques of force were at first varied. Several Northern cities enacted ordinances to segregate Negroes residentially. By 1917, the U.S. Supreme Court declared, in the case of Buchanan *vs.* Warley, that a municipality could not enact an ordinance to segregate Negroes or any other race because of the 14th Amendment. From then until 1948, the chief device of residential segregation was the "restrictive covenant"—a declaration placed in private property deeds which stated that the property could never be sold or rented to Negroes (or sometimes people of other races or religions as well). These covenants restricted the right of individual white owners to sell or rent their property to colored persons, if they wished to do so, and in 1948—in the case of Shelley *vs.* Kraemer—the U.S. Supreme Court decided that no agency of government, including the courts, could enforce such restrictions. After that, there was no legal basis for residential segregation, and the latter was maintained by individual prejudice and group pressure. Still, the removal of legal supports for residential segregation weakened it, and the period since 1948 has seen a slight diminution of racially restricted neighborhoods in many Northern cities. However, Negroes have continued to migrate out of the South into the Northern cities, and as they do so they contribute to the residential segregation. The migrants usually move into all-Negro communities, for several reasons: rents are low there, they have friends and relatives there, and group pressure from the whites pre-

vents them from finding available housing in white neighborhoods. Futhermore, residential segregation is enhanced by whites moving out of neighborhoods when a few Negro families succeed in finding housing in them.

A major basis for school segregation in the North has been residential segregation. Practically all school boards set school zone boundaries on the basis of neighborhood. Only "exceptional children"—that is, the severely crippled, blind, feeble-minded, those with superior intelligence, and other numerically small categories—are, as a matter of open policy, placed in schools outside their neighborhoods. Thus, when Negroes were forced into limited neighborhoods, they were also more or less forced into "segregated" schools. There are other factors, of a more deliberate character, in this segregation: the boundary lines between areas served by two nearby schools were often arbitrarily drawn so that white children would all attend one school and Negro children the other school. Thus, some school boundaries were "gerrymandered" for the specific purpose of segregating Negroes. Furthermore, the relatively few white pupils caught on the "black" side of the line were unhesitatingly given permits to attend the white school outside their neighborhood, and Negro children who lived on the "white" side of the line were "encouraged" to accept permits to attend the Negro school. Sometimes the school authorities did not readily grant permits, but white parents used "political pressure" to get them, or falsified their addresses so they would not need them.[4] By deliberate manipulation of pupil transfers, schools in Northern cities were effectively segregated. Since there was no statutory basis for this segregation, unlike the situation in the South, it came to be known as "de facto segregation". Throughout this discussion we shall refer to de facto school segregation as though it applied to Negroes only. Actually it applies in almost the same proportion to Puerto Ricans, Mexicans, and certain other minorities, and it is solely a matter of

convenience in writing that we refer simply to "Negroes".

De facto segregation was never as thoroughgoing as Southern "legal" segregation. A few Negro families might be found scattered in some white neighborhoods even in the large cities. In the smaller towns, there were usually not enough Negro children to justify sending them to a separate school, even if they all lived in the same neighborhood, and so small-town Northern Negroes retained the school integration they had always had. The same insufficient number of Negro pupils for the large secondary schools in some large cities resulted in some further racial intermingling. Further, in states with equal accommodations laws, private and parochial schools did not always succeed in excluding Negro pupils where the latter's parents insisted on their admission or where the policy of the school's directors favored integration. Thus, de facto segregation was only about 80 to 90 per cent complete. For this reason, some prefer to speak of "racial imbalance" rather than of de facto segregation.

> In Chicago in 1956, for example, nine per cent of the elementary schools with 10 per cent of the enrollment, were racially mixed, 70 per cent were predominantly white (90 per cent or more non-Negro pupils); 21 per cent were predominantly Negro (90 per cent or more Negro pupils). Fewer than 1 per cent of all Negro elementary pupils in the city were in predominantly white schools. In the estimation that 90 per cent of Chicago public elementary school pupils attended de facto segregated schools, if other minorities (Mexicans, Japanese, etc.) were grouped with Negroes, the degree of segregation would be higher. Among the academic high schools of the city, 29 per cent were racially mixed.[5]

> In Los Angeles in 1959, 43 of the city's 404 elementary schools had at least 85 per cent Negroes in their student populations and another 34 schools had the same percentage of Mexicans.[6]

A 1960 report of the board of education of New York City reported that about one-fifth of the New York City elementary and junior high schools enrolled 85 per cent or more Negro and Puerto Rican pupils, while 48 per cent of the elementary and 44 per cent of the junior high schools enrolled 85 per cent or more white pupils. Philadelphia reported that 14 per cent of its schools had an enrollment of 99 per cent Negro. In Pittsburgh in 1959, half of the Negro children in public schools attended schools which had 80 per cent or more Negro enrollment. Sixty per cent of all white children in public elementary schools and 35 per cent of those in public secondary schools attended schools which had less than 5 per cent Negro enrollment.[7]

Most elementary schools in the large Northern cities were completely racially segregated by de facto means. But there would be several secondary schools even in the large cities that were racially integrated, although there would be many secondary schools occupied solely by white and perhaps a few occupied solely by Negroes.

This was the situation from about 1910 to the late 1950's. After about 1955, Negroes increasingly protested discrimination and segregation. Negro families who resided within the boundaries of a "white" school district were more likely to resist the "encouragement" to accept a permit to attend a more distant Negro school. Under the pressure of the steady migration from the South, and with the weakening neighborhood boundary lines after the Supreme Court decision of 1948 removing the legal support behind the restrictive covenant, an increasing (but still small) proportion of Negro families were living in otherwise white neighborhoods. Further, there were increasing protests against gerrymandered school boundaries, especially since they often created situations in which some Negro children had to walk long distances to school. As a result of political pressure by Negro voters, school boundaries were occasion-

ally redrawn to be more equitable. These developments diminished de facto segregation somewhat. But the main foundation of de facto segregation in at least the larger Northern cities—residential segregation—remained.

A survey undertaken by the National Association of Intergroup Relations Officials (NAIRO) in 1961-62, of 200 out of a possible 380 Northern communities where the 1960 nonwhite population was at least 1,000, showed the continuing pattern of de facto segregation.[8] New York City had 122 schools which had over 90 per cent minority group enrollment; Detroit reported 81 and Cleveland 47. A local source indicated that of the 85 elementary schools in Kansas City, Missouri, 35 per cent are all-Negro in enrollment, while among the 17 secondary schools, 22 per cent are all-Negro.[9] In 1963, 83 per cent of all Negro children in Chicago public schools were in schools that could be considered segregated (schools with less than 10 per cent white children). Of white students, 86 per cent were in virtually all-white schools. If other minorities—Mexicans, Japanese, etc.—were grouped with Negroes, the degree of segregation would be higher.[10]

The Supreme Court decision of 1954, directed at legal segregation in the South, stimulated much thought in the North about de facto segregation. Two independent movements got under way to modify the latter. One was to break up the pattern of residential segregation, which underlies school and other institutional segregation. Organizations as different as the Urban League and the Unitarian Church encouraged Negroes to seek housing in white neighborhoods, and helped them to find such housing and to allay local opposition. More important, beginning in 1957, several of Northern states and cities passed what were called "Fair Housing" or "Open Occupancy" laws, stating that it was illegal for owners of property (excluding those with a small number of units) to refuse to sell or rent to persons

because of race, religion, or national origin. By 1963, 17 Northern states and cities had enacted some such legislation. Further, after a great deal of political pressure, President Kennedy issued an Executive Order, in late 1962, restricting somewhat the opportunity for home builders or buyers to borrow funds with federal government guarantees if they restricted the sale of the residences along racial or religious lines. Whereas urban renewal has generally been used to increase residential segregation, in 1963 New York State instituted a series of regulations designed to force communities that want urban renewal to combine racial residential integration with it. The effect of these various legal measures on residential segregation is uncertain, as of 1964, as there are a number of informal ways of getting around them. Some of the advocates of desegration believe that school desegregation is an important prerequisite to residential desegregation — rather than the other way around. Their argument is that legal procedures can more readily achieve school desegregation than residential desegregation, and that when children get used to associating with each other, one of the most important reasons for parents' refusing to live in a mixed neighborhood is eliminated.

The second movement to break up de facto school segregation was much more direct. Taking a cue from the Supreme Court decision of 1954, Negro and other opponents of de facto segregation said that segregation in any form was discriminatory and hence harmful to Negroes. They even stated that it was harmful to whites, since democratic principles required some degree of access among the classes and the races. They demanded the breaking down of school segregation in spite of the widespread existence of residential segregation. The means by which this was to be accomplished were of two general types: (1) Removing the deliberate devices used by school boards and superintendents to segregate the schools, such as gerrymandering and the

system of permits. This first set of changes was based on the principle that the school authorities should be "color-blind", but not take any positive steps to integrate the schools.[11] (2) Taking positive steps to overcome the effect on the schools of residential segregation and making deliberate efforts to integrate the schools, using a series of devices that will be examined later. From the time the latter proposals were first made—apparently in New York City in 1954—they set the stage for a controversy in most Northern cities over "de facto segregation" and "forced integration".

II. Arguments—Pro and Con—Over De Facto Segregation

The argument over de facto segregation is beginning to apply to the South as well as to the North and West, as the South starts to move away from de jure, "legalized", segregation. The Border states—Delaware, Maryland, West Virginia, Kentucky, Missouri, Oklahoma and the District of Columbia—are now exactly in the same position as the Northern states, with desegregation limited by residential concentration, gerrymandering of school zone boundaries, and pupil transfers. Farther South, there are a variety of "token desegregation" plans in operation which provide additional ways of getting around the Supreme Court's desegregation order. This trend for the South to become more like the North will likely become greater in the coming years. There is one respect, however, in which the older among the Southern cities will remain different from most Northern cities. Following a pattern from slavery days, the older Southern cities have large areas where Negroes and whites live in mixed communities, without the residential segregation that prevails through much of the North. Thus, one of the problems behind de facto school segregation in the North may be largely avoided in some Southern cities. But, in general, de facto segregation is becoming a nation-

wide practice, and—in the South—will nullify the current efforts to eliminate the effects of the old segregation laws unless it is tackled head on. Thus, the federal courts, if they are to pursue the effort to eliminate de jure segregation, are increasingly obliged to face the legal implications of de facto segregation.

The attack on de facto segregation is motivated by observation of its effects. Residential segregation, accompanied by the system of gerrymandering and permits, creates almost as much school segregation in the big Northern cities as legal segregation has accomplished in the South. The latter is demonstrably accompanied by gross and deliberate discrimination against Negroes. Is this also true of de facto segregation in the North? The history and dynamics of segregation are quite different in the South and in the North, and the effect on the Negro has been much greater in the South, yet the facts show some discrimination in the North also. There have been dozens of psychological and educational studies showing how segregated schools damage the intellectual and emotional development of Negro children. Since they have been adequately summarized elsewhere,[12] we shall here concentrate on the specific objective factors which likely cause this damage.

Government expenditure per pupil is planned as identical for each school within any given Northern school district, unlike the situation in the South. Still, education is not equal for Negro and white children in several respects. First, the school buildings in the slum areas where Negroes are concentrated tend to be old and out-of-date. The classrooms were constructed for old-fashioned methods of teaching (such as fixed seats), the playgrounds are usually small, there are no indoor play rooms or libraries, and the special rooms for shop or laboratories are often makeshift. The aesthetic effects of an old school building on the minds of youngsters attending it, especially when

compared with the physical appearance of a new, modern school across the tracks, might create a sense of inferiority. Second, teachers generally have preferences for the new schools with white pupils; the more experienced teachers with high seniority usually manage to get into these schools, leaving the old schools to be taught largely by novices or substitutes with a high rate of turnover. Thus, the quality of teaching is generally better in the white schools. Third, while *public* expenditures per pupil for school equipment and supplies is planned as identical in all schools within a city, the schools in wealthier neighborhoods often receive additional equipment and supplies through Parent-Teachers' Associations or through parents directly providing supplies for their children, while supply budgets in the poorer schools have to be stretched to cover essentials.

Fourth, while it is *planned* that government expenditure per pupil be the same for all schools, *in fact* the de facto segregated Negro schools often get less money than do the white schools or the mixed schools. It works out this way because of the effort to keep the schools de facto segregated: The Negro neighborhoods become densely crowded, and the old schools in those neighborhoods are expected to handle the larger numbers without a corresponding expansion in school rooms. The de facto segregated Negro schools are often put on double shift, with a corresponding decline in the quality of education and in the money spent per pupil. In Chicago in 1956, for example, although Negro pupils were only a little more than one-third of the total elementary school population, 81 per cent of those affected by the double shift were Negro.[13] When the population pressure becomes too great for even the double shift to handle the pupils, "instead of changing the district to fit the number of children who can be accommodated in the school and building a new school for the others, the Board of Education builds an addition; then another addition, or sometimes plans a large school at the onset until monstrosities

are reached".[14] In Gary, Indiana, in 1962, all of the 1,095 pupils on part-time schooling were in the Negro schools; at the same time, there was an excess of 4,721 children beyond building capacity in the Negro schools as compared with 1,689 for the white schools.[15] Even though funds are supposed to be allocated on a per-pupil basis in Gary, actual expenditures for salaries, text and work books, instructional supplies and library acquisitions were consistently less in the Negro schools than in those predominantly white. For all these objective reasons, de facto segregation causes an inferior education to be given to most Negro children.

There are additional, more subtle, factors to be considered. The expectations for pupil performance are lower in the poorer schools. Bright Negro pupils are discouraged from top learning performance by the standards of their teachers and by the informal pressures of their less qualified fellow pupils. They have no competition from white pupils whose abilities are more developed and whose parents are more demanding and encouraging. Aspirations to go on to college or to get training for the higher status occupations are not encouraged; teachers gear themselves primarily to meet the needs of the more numerous average-to-dull students. The brighter Negroes have no opportunity to associate with the white children who will naturally succeed to the leadership positions in the community which their parents now hold. Thus, an unplanned and unintended "vicious circle"[16] operates through the mechanism of de facto segregation to hold down the Negro pupils with the greatest potentiality. De facto segregation is thus, for many reasons, almost as discriminatory against Negroes as is legal segregation.

Negro children have other handicaps, which are not caused by differential schooling, but by their family and community background. Many of them live in slums, have little parental supervision, are seldom encouraged by their

parents and other associates to learn or perform well in school, are deficient in their early training in the use of good English, are not aware of the advantages to be provided by education, experience discrimination and social disorganization, and otherwise have disadvantages even before they start school, and which impinge on them from non-school sources after they begin school. These are also among the influences which contribute to the "vicious circle" keeping Negroes in an inferior position and performing in an inferior manner.

Discrimination is also evidenced in the employment of Negro teachers in the Northern public school systems. Negro teachers are employed in most of these school systems but they are seldom assigned to schools whose pupil memberships are all white or predominantly white.[17] In a few Northern systems, the Southern practice is followed of hiring Negro teachers exclusively for segregated Negro schools; this results in the hiring of inferior teachers because they happen to be Negro.[18] In Gary, Indiana, while almost half the teachers in white schools were on tenure, only 37 per cent of the teachers in Negro schools shared that status. There is some evidence that some cities use differential standards in employing white and Negro teachers.[19]

To break the vicious circle and to eliminate the objective discrimination of the older schools, movements were started to eliminate de facto segregation. The first approach—through abolition of the deliberate devices to create segregation, such as gerrymandering, the permit system, the all-white and all-Negro "branches", and the double shift—has been supported by court decisions, although many Northern school boards did not abolish these devices quickly or graciously. But it was the second approach—the positive effort to integrate the schools regardless of residential segregation, by gerrymandering in reverse and bussing chil-

dren to schools outside their neighborhood—which elicited vigorous, open, and organized opposition.

The second approach has not been accepted by all the supporters of desegregation; some prefer to work toward breaking down residential segregation first and to continue to keep the school authorities color-blind. Gerrymandering of school boundaries seems to these persons to be as unethical when used to overcome de facto segregation as when used to support it. The transportation of children to a school outside their neighborhood could involve a whole new set of problems, according to both the "color-blind desegregators" and the proponents of de facto segregation. First, it would add an additional expense to the school budget, which is mounting rapidly already because of the "baby bulge"—the increase in the birth rate during World War II and the post-war years, and because of the long-run movement to keep youngsters in school for longer periods of years. School budgets are supported largely by local taxes, especially property taxes, which are considered to be high and quite burdensome already. Second, the transportation of pupils would often necessitate the separation of children from neighboring homes, and even within the same family, to go to different schools. The allocation of children to the different schools would seem even more arbitrary to parents than it actually is, and would open many new opportunities for complaint. Children to be transported have to be made ready earlier in the morning, and they arrive home later in the afternoon, with less opportunity to play or do home chores. These children have to have their lunch away from home. White parents whose children would be transported away from good neighborhood schools to attend older schools in more distant neighborhoods would be especially resentful, and they would object more to the school authorities.

The transportation of children to out-of-neighborhood schools would not completely solve the problem of de facto

segregation even where it was instituted on a thoroughgoing and objective basis. School districts are usually separated by traditional political boundaries: Seldom does a city school system include the suburbs, and the suburbs could not legally be involved in the plans to transport pupils (unless a state statute were passed, which has not yet been done). Some of the movements of white families from central city to suburbs are at least partially motivated by the desire to avoid having their children go to an integrated school. Further, even where transportation of pupils has been used to desegregate city schools, informal barriers between Negro and white pupils have sometimes developed *within* the school. This is more likely in a secondary school than in an elementary school. Thus, complete school desegregation will ultimately require the end of all forms of residential segregation and the breaking down of the barriers created by prejudice. In the meantime, the current Northern battle centers around the question as to whether neighborhood should be the basis of a school's composition, or whether children should be transported outside their neighborhoods so as to break down the de facto school segregation due to residential segregation and racial concentration.

There are some aspects of this question which have little to do with race relations. Long before the question of de facto school segregation came to the fore, educators were arguing the pros and cons of neighborhood schools and pupil transportation. Most of the discussion applied only to the secondary school. The opponents usually argued in terms of the possibilities of having secondary schools specialize in certain programs of courses. One school might offer a concentration of foreign language courses, for example, which it would be impossible to provide in all the high schools of a city. Certain groups argued in favor of placing the brighter pupils together in superior secondary schools where they would not be held to the slower pace of the less intelligent. The opponents of the specialized schools argued that

the secondary schools did not need to offer specialized and intensive training—that could wait for the college years—and that it was valuable, on democratic grounds, to have youngsters who were destined for different types of careers to mingle with each other in their adolescent years. In other words, the neighborhood school was originally backed as a means of avoiding ethnic, class, and ability homogeneity among the children; now it is being attacked because it creates that very homogeneity in the large-city setting. Most cities resolved the question of specialized schools by providing one or two technical high schools—the only number that could afford expensive mechanical equipment—and retaining all other high schools as neighborhood and multi-program schools. New York City was the major exception by having a number of vocational high schools of various types, plus two or three highly selective high schools for the brightest of the college-bound students, leaving the remaining schools for average-to-poor students without specific vocational goals. While there is no necessary connection between the question of multi-program schools and de facto segregated schools, raising the question about bussing pupils for one purpose tends to re-raise the question of bussing them for another purpose. Some persons are ideologically tied to the neighborhood school.

It could be claimed that New York City was better psychologically prepared to break up de facto segregation in schools because it had already partly deserted the principle of neighborhood schools. In most other cities, the challenge to the neighborhood-based schools, for whatever purpose, has met with strong opposition in the past and it seems to be doing so again in the current effort to stop de facto segregation. Some of the objection to this effort, then, will be directed at the idea of transporting children to school rather than to racial integration, *per se*.

But the main resistance to the ending of de facto segre-

gation comes from those white parents who do not wish to have their children attending schools with Negro children. Some of these parents are motivated by racial prejudice; others are merely status-conscious and believe that if their children bring home Negro friends, that will lower their prestige in the eyes of their neighbors. Still others are honestly concerned by the low standards of the lower class Negro, and believe that to have their children attend a school with a high proportion of Negroes will subject them to poorer teaching, bad examples, and physical danger. This latter group of parents would not object to a small proportion of Negro children in their neighborhood schools, but many of the current proposals for bussing pupils in order to end de facto segregation are half-way measures that match equal proportions of white and Negro pupils in some schools and leave others in all-white. All of these sources of opposition to a proposal of transporting pupils to non-neighborhood schools result in strong political pressures on school superintendents and on school boards.

III. De Facto Segregation Before the Courts

The deliberate techniques of maintaining de facto segregation—gerrymandering, pupil transfer manipulation, and site selection—have been taken up by a small number of trial courts, and in some cases reviewed in appellate courts, and it is the purpose of this section to examine their legal status as a result of the decisions in these cases.[19a] Since some of the decisions have not been reviewed by the U.S. Supreme Court, it cannot be said that the law governing de facto segregation is clear or final.

A few cases have arisen in which it was contended that school authorities had deliberately established or maintained boundaries between school districts to promote segregation. In Clemons *vs.* Board of Education of Hillsboro,

Ohio[20], a Federal district court found that an elementary school zone had been established to insure the continuance of the Lincoln zone, established by resolution of the board of education, was made up of two completely separated areas, one in the northeast, and one in the southeast section of the city. Nevertheless the court refused to interfere lest it disrupt the orderly administration of the schools.

The United States Court of Appeals for the Sixth Circuit reversed the decision and instructed the district court to order immediate relief for the plaintiffs and to provide for the end of all school segregation at or before the beginning of the next school term. In his concurring opinion Judge (now Mr. Justice) Stewart declared:[21]

> . . . The Hillsboro Board of Education created the gerrymandered school districts after the Supreme Court had announced its first opinion in the segregation cases. The Board's action was, therefore, not only entirely unsupported by any color of State law, but in knowing violation of the Constitution of the United States. The Board's subjective purpose was no doubt, and understandably, to reflect the "spirit of the community" and avoid "racial problems," as testified by the Superintendent of Schools. But the law of Ohio and the Constitution of the United States simply left no room for the Board's action, whatever motives the Board may have had.

In Henry *vs.* Godsell,[22] another Federal district court found no basis for the plaintiff's allegations that school attendance zones in Pontiac, Michigan, had been changed to compel, or achieve racial segregation.[23]

> . . . The board of education has altered and modified attendance areas from time to time to accommodate changes in population and as a result of the erection of new schools and additions to existing schools.

> . . . *In the absence of a showing that attendance areas have been arbitrarily fixed or contoured for the purpose of including or excluding families of a particular race,* the board of education is free to establish such areas for the best utilization of its education facilities.

In Taylor *vs.* Board of Education of New Rochelle, N. Y.,[24] in 1961 the court found that the school board had denied plaintiffs equal protection of the laws by deliberate gerrymander of the Lincoln School attendance zone to create and maintain an all-Negro school. The crucial facts appear in the following summary.

In 1930 the school board established highly *irregular* school zone boundaries so that the Lincoln zone would include little but Negro areas, while the adjoining Webster zone was mainly white. In ensuing years, as the Negro area expanded to the west of Lincoln, its attendance zone was extended to contain them. Similar action was taken to keep the nearby Mayflower School white in enrollment. White children remaining in the Lincoln zone were allowed to transfer to other schools. The result was that children living in adjoining houses attended different schools solely because of race. White children living south of Lincoln were assigned to Mayflower, half a mile north of Lincoln. Then early in 1949 the board, adopting a resolution to study zone lines, banned all transfers as of the following September 1. From January 1949 to the date of the Taylor suit no redistricting was adopted, although the Board discussed the problem, hired experts, made surveys, and reiterated its belief in racial equality.

In reply to the Board's contention that the *School Segregation Cases* did not apply, since the Lincoln School was not a component of a *de jure* system of separate white and Negro schools, the court said:[25]

> . . . I see no basis to draw a distinction, legal

> or moral, between segregation established by the formality of a dual system of education, as in *Brown,* and that created by gerrymandering of school district lines and transferring of white children as in the instant case.
>
> . . . The result is the same in each case: the conduct of responsible school officials has operated to deny to Negro children the opportunities for a full and meaningful educational experience guaranteed to them by the Fourteenth Amendment. . . .

The Board also claimed that the established attendance zones merely reflected its policy of neighborhood schools which it said was both reasonable and educationally sound. The court rejected this defense too, for it:[26]

> . . . ignores the essential nature of the plaintiff's position. They are not attacking the concept of the neighborhood school as an abstract proposition. They are, rather, attacking its application so as to deny opportunities guaranteed to them by the Constitution. It is a legal truism that "acts generally lawful may become unlawful when done to accomplish an unlawful end." Western Union Telegraph Co. *vs.* Foster, 247 U.S. 105 (1918) (Holmes, J.). Moreover, as Justice Frankfurter succinctly noted in his concurring opinion in Cooper *vs.* Aaron, 358 U.S. 1, 25 (1958): "Local customs, however hardened by time, are not decreed in heaven."
>
> The neighborhood school policy certainly is not sacrosanct. It is valid only insofar as it is operated within the confines established by the Constitution. It cannot be used as an instrument to confine Negroes within an area artificially delineated in the first instance by official acts . . . .

To the extent that lower court decisions can do so, these cases make it clear that the principle of the *School Segregation Cases* applies to racial segregation in the North

and West resulting from official action, in violation of state law, as well as to segregation in the South.

Administrative policy on transfer of pupils from schools in their own zones of residence to schools of their choice may reinforce or alleviate segregation. Can government validly encourage transfers on racial grounds to achieve desegregation even though presumably it may not do so to achieve segregation? The courts have not yet had to face this question.

School boards usually are authorized to select sites for new schools. This, like the power to fix attendance zones, if misused to promote racial segregation, would seem to constitute state action that is forbidden by the equal protection clause. Apparently the *New Rochelle* case (discussed above with regard to the gerrymander) is the only one in which a charge of abuse of authority was sustained on this ground.

In Sealy *vs.* Department of Public Instruction of Pennsylvania[27] in 1957 an effort to prove discrimination by site selection failed. The facts showed that the school district in question was composed of two noncontiguous areas. The upper section had a Negro public school population of less than 5 per cent, the lower of more than 95 per cent. Even after allowing for the large number of children (particularly whites living in the upper section) who attended a Catholic parochial school, there were about 17 per cent more public school students living in the upper, than in the lower section. A new school was to be built to replace an old one located in the lower section. It was to serve all children living in the district. The trial court found no evidence that the school board had been motivated by any racial consideration in its decision to locate the school in the upper section. Since all junior high students in the district, both Negro and white, would be free to attend the new school, no real question of creating a segregated school by site selection was involved in the case.

In affirming the lower court decision, the United States Court of Appeals for the Third Circuit said:[28]

> The location of schools assuredly is one for State school authorities and local school boards; for State, not national courts, unless there be a deprivation of rights guaranteed by the 14th Amendment. The plaintiffs have failed to prove their case.

In the *Pontiac* case, referred to above, discrimination by site selection was also charged. The facts showed that two sites had been considered. One was located in a densely populated Negro neighborhood, the other in a rather remote, but apparently less racially congested area. The latter was rejected because it presented safety hazards for little children. The court found no abuse of discretion, saying:[29]

> (A school board) may consider such factors in selecting sites that it considers relevant and reasonable and, in the absence of a showing that the standards for selection are not relevant and reasonable and that in reality they were adopted as a sham or subterfuge to foster segregation, or for any other illegal purpose, their use is within the administrative discretion of the school board. The fact that in a given area a school is populated almost exclusively by the children of a given race is not of itself evidence of discrimination. The choice of a school site based on density of population and geographical consideration, such as distance, accessibility, ease of transportation, and other safety considerations, is a permissible exercise of administrative discretion.

The *New Rochelle* case,[30] discussed above, started with a school board decision to build a new school on the site of the Lincoln School, which the court found had been deliberately created and maintained as a Negro school. Instead of issuing an injunction, the court ordered the board to present a desegregation plan. The plan presented by a

majority of the board was based upon existing school zones, but included strictly circumscribed, permissive-transfer privileges.[31] No transfer would be allowed unless approved by the pupil's classroom teacher, his school principal, and the superintendent of schools; nor would one be valid for more than a year. (Transferees could be displaced after 1 year by children living in the zone of the receiving school). The right to transfer was further limited by a board ruling as to maximum class size. The minority members of the board submitted a plan which the court refused to bar from consideration.[32] It called for immediate transfer of upper-grade pupils and the abandonment of Lincoln School in 1964.[33]

Upon the invitation of the court,[34] the United States Attorney General submitted an *amicus curiae* brief in which it criticized the majority plan, referred to the minority plan only indirectly, and ignored the question of segregation by site selection. Although acknowledging that, under the second *Brown* decision the suitability of a plan is to be determined by local school conditions, the United States suggested that the free transfer programs of the border cities of Washington, D.C., Baltimore, Oklahoma City, and Louisville should be the criterion for New Rochelle.[35] Then this crucial observation:[36]

> . . . It may well be that, upon experience, it will appear that placing the burden of applying for transfers upon the Negro children is not the most effective way of eliminating the deplorable conditions which presently exist. It seems quite possible that thorough elimination of segregation will require revision of school district boundaries or plans for completely free transfers. This, in turn, may necessitate the construction of additional schools or the enlargement of facilities at present schools, as is proposed by the plan submitted by the dissenting minority of the Board of Education. But a desegregation plan formulated along the lines suggested above would at the very least, be an acceptable, interim solution and would constitute a sound,

> constructive step toward the realization of the goal of constitutional equality of treatment. Since the Court would retain jurisdiction, it may ultimately fashion a broader remedy.

The court adopted the *amicus* recommendation. It ordered the board to distribute promptly applications for transfer to parents of all children expected to enroll in the Lincoln School the following fall. The application forms were to: (1) show the expected vacancies in each grade of all other elementary schools; (2) provide space to list at least four schools, in preferential order, to which transfer was requested; (3) give notice that transportation would be at parents' expense; and (4) indicate the final date for filing applications. The order permits the board when acting upon a transfer application to consider class size of the receiving school (but it expressly prohibits departures from existing maximum limitations), and also prohibits consideration of academic achievement or emotional adjustment. The court also ordered the board to assign transferees to the same grades they would have been eligible to attend at Lincoln, and to permit them to stay in the receiving school until completion of the elementary grades, unless they moved to another school zone.

The Board's contention that it alone had legal authority to select locations for schools was summarily answered:[37]

> The existence of this authority, however, is not questioned by the plaintiffs. But this power, like any other, must be exercised in accordance with the demands of the Constitution.

In view of these statements the court's failure to enjoin the building of a small school on the Lincoln site is puzzling. The court-approved, free transfer plan appears to be at most a temporary stopgap that might have proved to be entirely ineffectual if the new school were to be built. Irving

Kaufman's decision was sustained in the higher federal courts, and—following a period of bitter community argument—the decision was implemented and the new school was not built on the side of the old one.[38]

The above decisions suggest the following general rules as to site selection vis-a-vis equal protection:

1. The discretion granted school boards to select school locations must be exercised in good faith in the light of such factors as are relevant and reasonable.

2. In the absence of a showing that the factors used by the board are not relevant and reasonable, or are a sham or subterfuge to foster segregation, the action of the board will not be disturbed.

3. The fact that the school by reason of its location may be attended solely by white pupils, or solely by Negro pupils, is not of itself proof of an abuse of discretion in site selection.

Because of the inherent possibilities of abuse, site selection may well become an important issue in the future.

The foregoing discussion suggests that gerrymandering, transfer manipulation, and site selection when used by public officials to promote school segregation violate the equal protection clause of the 14th amendment. They do so, of course, regardless of the relative quality of the facilities provided for the separated races. Attention will now be directed to other situations that may constitute denials of equal protection—situations in which inequality arises from the inferiority of the school to which a pupil is assigned.

From 1896 until 1954 the requirements of the 14th amendment were met, if the separate schools for Negroes were equal to the separate schools for whites.[39] The *School*

Segregation Cases did not change this basic rule; they merely dispensed with the necessity of proving inequality in cases where racial segregation is imposed by State action—for the Supreme Court held that as a matter of law "separate educational facilities are inherently unequal." Proof of inequality of segregated schools therefore has not been a crucial element in the post-1954 cases arising in the South.

In short, substantially equal government treatment of all persons regardless of their race, religion, or national origin was, and still is, the heart of the law. But suppose there is no state-promoted racial discrimination—no improper gerrymandering, manipulation of transfers, or site selection. Does mere inferiority of a particular school in contrast to other schools in the same system constitute a denial of equal protection? Is a pupil denied equal protection when the particular school to which he is assigned is more crowded, has more pupils per teacher, less qualified teachers, or a more limited curriculum than other schools in the system?

Overcrowding of some schools and empty or partially filled classrooms in others raises the question of *when,* if ever, is there a constitutional duty to rezone, or take other action, to secure a more even distribution of pupils. When does inaction on the part of a school board become culpable nonfeasance? Such questions, difficult enough in themselves, are often complicated by incompleted building programs and the undesirability of frequent transfers.

In the *Skipwith* case,[40] decided by a domestic relations court of New York City in 1958, parents of Negro children were prosecuted under the compulsory school attendance law of New York for failure to send their children to school. Their defense was that the segregated public school to which their children were assigned was inferior to the predom-

inantly white schools in the city; that they were refused the right to attend any other school; and that, therefore, they were denied equal protection. The court upheld the defense, and made it clear that the decision was not based upon a finding that racial segregation in the schools was created by any misconduct of the school authorities.[41]

> . . . the conclusion must be drawn that *de facto* racial segregation exists in the Junior High Schools of New York City . . . . What the record in this case does not show is to what extent, if any, such segregation is the consequence of circumstances other than residential segregation not attributable to any governmental action. There is no evidence before the court that the racial composition of the Junior High Schools in New York is the product of gerrymandering of school districts, or of any policy or lack of policy of the Board of Education in establishing school districts, or in choosing school sites, or in assigning pupils to schools on the basis of race . . . no showing has been made that *de facto* segregation in New York City is the consequence of any misfeasance or non-feasance of the Board of Education.

Having found no officially established segregation, the court considered the question of inferiority in the *de facto* segregated schools as compared with the predominantly white schools in the city. The evidence submitted related to teacher preparation and experience. With regard thereto the court said:[42]

> Analysis of the data submitted on teacher assignment shows a city-wide pattern of discrimination against X Junior High Schools (which have 85% or more Negro and Puerto Rican students) as compared to Y schools (which have 85% or more white students) : A far greater percentage of positions in the X schools were not filled by regularly licensed teachers.

The average percentage of teacher vacancies in X schools

was shown to be 49.5 per cent citywide, while in Y schools it was 29.6 per cent. In the two schools to which the defendants' children were assigned it was 50 and 51 per cent. The court observed that:[43]

> . . . No evidence was submitted to show that the Board had adopted any procedure under which correction of the discriminatory balance between regularly licensed and substitute teachers could be reasonably anticipated.

The Supreme Court's decision in Sweatt *vs.* Painter in 1950[44] left no excuse for thinking the 14th amendment required anything less than true equality. The elements found to make X schools inferior were their relatively high percentage of handicapped and retarded children, and inexperienced substitute teachers.

The court concluded that:[45]

> So long as nonwhite or X schools have a substantially smaller proportion of regularly licensed teachers than white or Y schools, discrimination and inferior education, apart from that inherent in residential patterns, will continue. The Constitution requires equality, not mere palliatives.

An argument that teachers' choice of schools, rather than board assignment, caused the disparity, led the court to say:[46]

> Having put the power of assignment in hands of teachers by default, as far as their choosing or not choosing to teach in an X's school—the Board is bound by the acts of its servants . . . .[47]
>
> The Board of Education of the City of New York, can no more disclaim responsibility for what has occurred in this matter than the State of South Carolina could avoid responsibility for a Jim Crow State Democratic Party which the state did every-

> thing possible to render "private" in character and operation. See Rice *vs.* Elmore, 4th Cir. 165 F 2d 387, cert. denied, 333 U.S. 875, . . .

The *Skipwith* case clearly holds that inferiority of the school to which a pupil is assigned as compared with other schools in the system constitutes a denial of equal protection of the laws—*notwithstanding the absence of any official action or inaction calculated to segregate or discriminate on grounds of race.* Skipwith appears to apply where there is a substantial disparity in the quality of schools—whether the plaintiff be Negro or white.

It is interesting that the Supreme Court of Appeals of Virginia in 1957 reached the same conclusion in similar circumstances. In Dobbins *vs.* Commonwealth of Virginia,[48] an action was brought under a compulsory school attendance law. The defense of the Negro parent was that his son had been assigned to an inferior, distant, Negro school although he had sought and been denied admission to the local white high school. Evidence was offered to prove the inferiority of the assigned school. It was rejected by the trial court. The highest court of Virginia found that the evidence should have been admitted and that under the circumstances the defendant did not violate the compulsory school attendance law because it "cannot be applied as a coercive means to require a citizen to forego or relinquish his constitutional rights." In both of these cases the defendants asserted their constitutional rights defensively. Probably the same rights could be asserted to provide affirmative relief—by way of transfer, rezoning, or other means—against inferior school facilities. A final legal question which remains to be settled is whether a school system must take steps to eliminate de facto segregation caused solely by residential segregation and the practice of having neighborhood schools, when no direct evidence is presented that the de facto segregated schools are providing an inferior education. That is, such cases would not involve deliberate de facto segregation—

by gerrymandering or pupil transfers—and the only evidence of school inferiority presented is that of the segregation itself. With regard to the latter point alone, the Supreme Court decided in the *School Segregation cases* (1954) that segregation *ipso facto* meant inferior schools and that inferior facilities would not have to be demonstrated in court if segregation prevailed. Since those cases dealt with *complete* de jure segregation, they may not apply to "racial imbalance" situations where the segregation is not complete; the court has never specified what percentage of racial concentration indicates segregation. The more recent court decisions dealing with de facto school segregation based on residential segregation alone show conflicting findings.

The first case was begun in 1962 in Gary, Indiana.[49] The plaintiff, the NAACP acting on behalf of 110 Negro Gary school children, presented evidence of growing de facto school segregation in Gary and of assignment of teachers according to race, and argued that the Brown *vs.* Board of Education decision (1954) of the U.S. Supreme Court held that a segregated school system could not provide equal educational opportunities and hence was unconstitutional. The trial court, a U.S. District Court in Gary, decided against the plaintiff, who then appealed to the 7th Circuit Court of Appeals in Chicago in 1963.[50] The Circuit Court sustained the District Court, and the case was then appealed to the U.S. Supreme Court, where it rests at the time of writing.[51]

In another federal district court case in 1962, in New York, the finding was opposed to that in the Gary case. The court stated: "The educational system that is thus compulsory and publicly afforded must deal with the inadequacy arising from adventitious segregation."[52]

"The court's language, though guarded, ap-

parently recognizes a general duty in the school board to rectify factual segregation caused entirely by residential patterns and neighborhood schools."[53]

Similarly, the California Supreme Court held that "where . . . (residential) segregation exists it is not enough for a school board to refrain from affirmative discriminatory conduct. The harmful influence on the child will be reflected and intensified in the classroom if school attendance is determined on a geographical basis without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause."[54]

The Manhasset, New York, school case, argued at the federal district court level by NAACP attorneys in January, 1964, presents another variant on this line of court thinking.[55] The decision acknowledged in fact the existence of racial segregation on a *de facto* basis, maintained in part by rigid adherence of the school board to the neighborhood principle; and it took the favorable action of ordering the school board to bring in a plan to desegregate the elementary schools of the city. Evidence was presented in this case which intended to show the qualitative inferiority of the racially segregated school. However, the Court rejected the argument and evidence that segregation had impaired learning and achievement. It did acknowledge the fact of psychological injury under such segregation, "like pain and suffering in a tort action," but it excluded the consideration that such psychological damage impaired academic achievement. In spite of the Court's denial, it is difficult to believe that these broad considerations were not taken into account, especially when one reads the poignant language used by the Court in describing the psychological isolation of the segregated Negro child:

"They see themselves living in an almost en-

> tirely Negro area and attending a school of similar character. If they emerge beyond the confines of the Valley Area into the District at large, they enter a different world inhabitated only by white people. They are not so mature as to distinguish between the total separation of all Negroes pursuant to a mandatory or permissive state statute based on race and the almost identical situation prevailing in their school district. The Valley situation generates the same feeling of inferiority as to their status in the community as was found by the Supreme Court in *Brown* . . . . "

In what the NAACP counsel declared to be "the best analyzed decision on this problem that has been handed down,"[56] Federal Judge Joseph C. Zavatt made the following additional points:

> "On the facts of this case, the separation of the Negro elementary school children is segregation. It is segregation by law—the law of the school board. In the light of the existing facts, the continuance of the defendant board's impenetrable attendance lines amounts to nothing less than state imposed segregation."
>
> "In a publicly supported, mandatory state educational system, the plaintiffs have the civil right not to be segregated, not to be compelled to attend a school in which all of the Negro children are educated separate and apart from over 99 per cent of their white contemporaries."
>
> "The repeated reference (by school authorities) to possible community preference and the statement that the Valley situation is a matter of community determination betray an unwillingness to face an educational problem as such. It is the board, not the electors, who fix attendance policies. It is the board, not the electors, who must determine when, if ever, those policies should be modified."
>
> "By maintaining and perpetuating a segregated school system, the defendant board has trans-

> gressed the prohibitions of the equal-protection clause of the Fourteenth Amendment."
>
> "The court does not hold that the Constitution requires a compulsive distribution of school children on the basis of race in order to achieve a proportional representation of white and Negro children in each elementary school district."

Judge Zavatt ruled that it did not matter that fully equal school facilities and teachers were provided for the Negro school; the issue was the existence of segregation.

All of the cases mentioned thus far involve the question whether a reluctant school board can be compelled by a court to take action to overcome de facto school segregation. Two decisions by lower courts in New York raise the question whether a willing school board can lawfully take such action. The first case, Balaban *vs.* Rubin, tried in a Brooklyn court, decided that a New York statute prohibiting discrimination in schools prevented the New York City Board of Education from gerrymandering a school zone so as to reduce racial imbalance. The same conclusion based on the same reasoning was reached in a case arising in Malverne, Long Island (Vetere *vs.* Allen), where the defendant was the State Commissioner of Education. Neither judge found it necessary to decide whether the Board or the Commissioner acted unlawfully under the State or Federal Constitutions if there were no specific state statute enacted in 1900 forbidding exclusion from a public school on the basis of race. Thus, these two cases do not go to the heart of the legal issue involving deliberate efforts to stop de facto school segregation.[57] On March 10, 1964, a New York Appellate Court reversed the Brooklyn trial court, and ruled that school authorities could legally take action to stop de facto school segregation as long as the principle of neighborhood schools was maintained. It also stated that school authorities would not be obliged to go so far as to stop de facto segregation by bussing children outside of

their neighborhoods. Again, the constitutional issue was not reached, and the decision hung on the interpretation of the 1900 statute of the state of New York.[58]

IV. Methods to Abolish De Facto Segregation where there is Residential Segregation.

While the battle continues in some Northern cities to eliminate the deliberate devices—gerrymandering, transfer manipulation, and site selection—used to maintain de facto school segregation, other Northern cities are exploring possibilities for overcoming de facto school segregation based solely on residential segregation. Some of these methods have already been suggested, but it is necessary here to examine the methods in greater detail and to assess their feasibility and effects.

The *division by grades* method seems first to have been adopted in Princeton, New Jersey, and soon after in Willow Grove, Pennsylvania, and Benton Harbor, Michigan, and then elsewhere around the country. Where there are two nearby schools, one serving a Negro community and the other an adjacent white community, the two schools are placed in a common zone, one to serve children in grades one through three, and the other to serve children in the higher elementary grades. This method, of course, works best where the two schools—and the Negro and white communities—are very close to each other geographically; in fact, it works best where the two schools were originally built specifically for the purpose of creating segregation. This form of desegregation requires that children walk further to school during half of their school years, but this is feasible if the common zone has a sufficiently high density of population so that it can sustain two schools in not too large a geographic area. It has the advantage over other methods of desegregation of keeping all the children in the new common zone together on the same basis, without the

onus of some children being regarded as "belonging" to the school and others coming in from the outside. It has the incidental advantage of segregating children by age, so that the school can specialize its services more over a narrower age range and so that older children are not able to dominate younger children. However, some parents object to not being able to have their older children guide the younger ones to school, thereby often being obliged to take the younger ones to school themselves. Older children are not available at the K-3 school to serve as a school patrol—thus necessitating more adults to serve as street-crossing guards. The method cannot be used exclusively in the larger cities where there are huge segregated Negro communities, large parts of which are quite remote geographically from any white community or white school. The division by grades method is seldom feasible with senior high schools, which are usually geographically far apart, which have few grades that can be split, and which offer courses that are taught across grade levels.

The *rezoning* and *relocation* method involves changing the geographic location of schools and their boundary lines in such a manner that school zones have a maximum of heterogeneity of population. Many cities have a large number of older schools that are antiquated and inefficient, with sagging window frames and high ceilings that waste heat, with educational facilities and equipment that are completely outdated, with buckling floors and worn down steps that are dangerous. These buildings are torn down and replaced, from time to time, and the new location affects the question of the heterogeneity of the youth to be served by the school. New schools can be placed on the borders of Negro and white neighborhoods so that intentionally they include both groups of children. Even when whole new schools are not built, the increasing population of a school zone requires the building of a branch or two. Sometimes these are limited to a single grade. Such branches can also

be located close to the borders between Negro and white neighborhoods.

The method does not long solve the desegregation problem when boundary lines between Negro and white neighborhoods are changing, and it has the added disadvantage of sometimes locating school buildings in locations undesirable except in the specific terms of effectuating desegregation. Even where new schools or branches are not to be built, the boundary lines of old school zones can be redrawn to make the existing schools have heterogeneous populations. Just as under the old or existing regimes of de facto segregation, boundary lines were gerrymandered to keep school populations homogeneous, so boundary lines can be gerrymandered in a different way to make school populations racially heterogeneous. This method can more readily be accomplished with secondary school zones. The method is feasible when Negro residential district are geographically close to white residential districts; it can scarcely be used for those sections of Negro districts in the largest cities which are remote from white areas or are separated from the latter by political boundary lines. The method has the advantage of maintaining the principle of the neighborhood school, with the likelihood that children can walk to and from school and associate with schoolmates in after-school hours. In some instances, however, children will have to walk farther to school, as was true under the old gerrymandering to create segregation. The redrawing of district lines to make school populations heterogeneous has the disadvantage of exposing the school board and superintendent to constant political pressure for the purpose of revising the school zone lines or of granting permits for individual exceptions in assigning children to a given school; once the device of gerrymandering is used for one purpose it can be used for another purpose.

A variation on this method would involve coalescence of city and suburban school districts, under state laws, so

as to eliminate the almost rigid separation of Negro and white children created by these political boundaries. Very few Negroes have been allowed to live in suburbs, or have the means or desire to live in the suburbs. Whites seeking to avoid contact with Negroes sometimes move to the suburbs. For other reasons as well, suburbs are becoming more attractive for white residents. Thus, suburban school districts include an increasing proportion of the white children and have them in all-white schools. Conversely, the colored children are practically all located in the central city and there are decreasing numbers of white children for them to integrate with. At the extreme, the city of Washington, D.C., has a school population 85 per cent Negro, and thus with the strongest intention of doing so, its school administrators could not effect much integration. New York's Manhattan Island is not a complete school district, of course, but with almost 80 per cent of its public school children being Negro and with sharp geographic boundaries between it and the other parts of the New York City district, the school administration finds it very difficult to integrate there also.

The proposal that the state should order coalescence of city and suburban school districts, or to effect an exchange of pupils, is intended to reduce this source of de facto segregation. It would not work, of course, where the political boundaries between city and suburb are also state boundaries, and the method does not seem politically feasible at this time because of city-suburb antagonisms on other grounds. The method could relieve much de facto school segregation in cities like Chicago, Detroit, Cleveland and Philadelphia. If it were put into operation there, it could probably reduce some of the whites' flight to the suburbs and thus permit a more effective desegregation within the central city. The method has the other defects mentioned for redistricting within a central city.

The *method of voluntary transfer* involves allowing

children in overcrowded schools to opt for attendance at more distant underpopulated schools and get free bus service to make this shift feasible. In many of the large cities, the de facto segregated Negro schools are overcrowded, because there has been steady migration of Southern Negroes to the racial ghettoes of these cities. At the same time, white families have tended to move out of their city neighborhoods to live in the suburbs, leaving their houses or apartments to be occupied by childless couples or single people. The method of voluntary bussing thus offers willing Negro parents the opportunity to get their children to the better and less crowded schools in white areas. It involves some extra expense for buses, but it also allows more efficient use of school space and facilities. It requires that the receiving schools have lunchrooms, since it is not possible for the bussed children to be sent home for lunch. It destroys the principle of the neighborhood school, and often results in informal segregation within the white school of the small number of Negro children who choose to go out of their neighborhood. It usually desegregates the children of the more ambitious Negro parents, but does nothing about the de facto segregation of the more numerous Negro children who remain in the original school. The method also fails to desegregate the non-overcrowded Negro school. The method is apparently legal when impartial criteria are used to declare that certain schools are overcrowded and others are underutilized, and all children—white or Negro—are eligible to apply for transfers from the former schools to the latter as long as they are in the defined categories. If there are overcrowded schools with predominantly white children, some of these children may also apply for transfers to underutilized schools, until the original school is no longer overcrowded or until the receiving school is no longer underutilized. The method has been successfully utilized in New York City and Detroit.[59]

A variation on the method of voluntary transfer is New

York's "free choice" method. One elementary school in the Negro area of Harlem is made available for voluntarily requested transfers from schools anywhere else in the city. It is hoped that liberal-minded white parents, especially those whose children are in overcrowded white schools, might volunteer their children to break up the de facto segregation in a school where there are no whites living nearby. One Harlem school principal is seeking to publicize this opportunity by holding a fact and workshop session in a church every week-end for almost two months.[60] The method has even greater difficulties than the usual method of voluntary bussing as it involves picking up children from widely scattered areas for transportation, and it involves sending them to a school where the already resident pupils are intellectually handicapped.

The method of *compulsory transfer* involves transfers of a significant number of children in all de facto segregated schools, white and Negro, and bussing these children, if they live more than a mile from the receiving schools, to schools where the other race predominates. This method is the most drastic of all, and it is the only one which will effectively desegregate all schools, even those in all-Negro and all-white communities which are far from each other. It involves the complete abandonment of the principle of the neighborhood school, and adds a considerable cost for bussing children. It requires that all schools have lunchrooms where children can purchase lunches, since it is not feasible for the bussed children to be sent home at noon. It evokes the strongest resistance from parents whose children are transferred from "good" schools to "poor" ones; some of these parents evade the change by sending their children to private schools or by moving to the suburbs. The method almost necessarily involves setting a racial quota for each school or for the school system as a whole, and a New York court has declared this device to be illegal, although the case is subject to review by a higher court.

These four methods can be used in various combinations, as they have in New York City. They can be inaugurated all at once, or be gradually introduced, usually by starting with one grade at a time and adding another grade in each successive year. All desegregation creates the problem of placing the better-educated white children in the same classroom with the less-well-educated Negro children. Thus, the methods are likely to be more successful when combined with a remedial teaching program for the below-standard (usually Negro) children.

The problem created by integrating poorly trained Negro children of inferior background with white children has led to some serious questioning of all the desegregation procedures on the part of those not motivated by prejudice. A study of the Negro children in the Harlem area schools of New York City showed that 20 per cent of the third-grade pupils were below their grade level by about a year; seventy per cent of the sixth-grade pupils averaged two years below their grade level; and 85 per cent of the eighth graders averaged three years behind.[61] When such children are bussed to underpopulated white schools they take most of the time of the teachers without necessarily catching up and leaving the white pupils without adequate instruction. To avoid this, the New York school system has often apparently chosen the superior Negro children for bussing, which leaves the remaining children in the Negro schools without challenge or leadership, continuing their inferior education.

In response to this dilemma, some experts are now advocating an extensive and expensive upgrading of instruction in the Negro schools before desegregation. Professor Kenneth B. Clark of the City College of New York, whose 1954 challenge to the New York City Board of Education started the desegregation program, says "The only thing that will really matter is the total reorganization of

the educational system in these (Negro) communities."[62] He advocates sending especially well qualified teachers and principals to the Negro schools, using a large ratio of guidance counsellors and other auxiliary personnel, reorganizing the curriculum, supplying the schools with the most modern and effective educational materials, and inaugurating "daring, imaginative educational experimentation." He recognizes that this will require greater school expenditures in the de facto segregated Negro schools, and he advocates this approach even if desegregation may be delayed.

The problem has a two-fold origin—the inferior education offered in the de facto segregated Negro schools and the deprived background of the Negro children in the family. New York City is beginning to experiment with the possible solutions for both sources of the problem. Two schools in the Harlem area are offering kindergarten classes for 4-year olds, and all of the elementary schools are attempting to enrich the background of the children by providing a broader range of experience in the early grades. Even if the school system should make the best possible effort, however, it does not completely solve the problem of the culturally deprived child, since the family is not sufficiently motivated to take advantage of the special opportunities the schools offer. The field superintendent of the Harlem area schools, Dr. Charles M. Shapp, noted that despite the efforts of the schools, about a third of the children entering first grade had not attended kindergarten. "The parents do not send their children, though 9 out of 16 elementary schools in the Harlem area have openings available in their kindergarten classes," he said.[63]

In 1956, the New York City Board of Education began a "Demonstration Guidance Project" in Junior High School 43, located in Harlem.[64] The school had a student body of 1,400, of whom 48% were Negro, 38% Puerto Rican and 14% continental white. The initial purpose of the project

was "the early identification and stimulation of able students" in a school in a culturally deprived area. This significant experiment was aimed at raising levels of aspiration and achievement by compensating for cultural deprivation and by motivating children to attain their full potential.

The Board of Education allotted $51,000 to the project during its first year, $98,500 the second, and $120,000 the third. (Additional smaller sums were contributed by the College Entrance Examination Board and the National Scholarship Service for Negro Students.)

About 700 students, the top half of the student body, as measured by I.Q. and achievement tests, were selected for the experiment. The next step was to assign special personnel to the school. Three full-time "counselors," two teachers of remedial mathematics, one half-time teacher for educational and cultural enrichment, one school secretary, one assistant to the principal and the part-time services of a psychiatrist, a psychologist and a social worker were provided. In addition, special personnel already assigned to the school were detailed to the project, including two teachers of remedial reading, a Puerto Rican "co-ordinator," an attendance and behavior counselor and a part-time speech improvement counselor.

The 700 students in the sample were grouped on the basis of test data in special project classes, reduced in size. A double period of English was given daily and remedial teachers worked with retarded students. In addition, the special personnel assisted in training regular teachers and in giving parents an understanding of the project. Individual counseling was given, as well as weekly guidance sessions for the entire group. Finally, "cultural enrichment" excursions were made to West Point, Hyde Park, various colleges and to theatres, concerts and ballets in the city.

The results were striking. The project demonstrated,

in the School Superintendent's words, that "aspirational and educational levels of under-privileged children can be raised, if people are willing to plan for it, work for it, and spend for it."[65] An I.Q. test (the Pintner Test of General Ability, verbal) showed an average increase in verbal I.Q. of 7.7 points (from 95 to 102.7) and a median increase of 9.3 points for the 700 project students. (I.Q. figures usually get progressively lower as culturally deprived children advance in elementary schools.) The median project student was 1.4 years retarded in reading in October, 1956, and three months above grade level in April, 1959. In mathematical ability, the average student in the sample showed a gain of 18 percentile points, raising his level from below average to average.

Finally, there was "a tremendous difference in achievement" between the graduates of J.H.S. 43 who entered a nearby high school before the project began and those who entered afterwards. In 1953, only five of the 105 J.H.S. 43 graduates had passed all their academic high school subjects. In the 1958 project group, 43 or 38% passed all their subjects at the end of the freshman year and 16 had averages of more than 80%. As a by-product of the experiment, school attendance improved and delinquency and misbehavior declined in the junior high school.[66]

The experimental findings were so spectacular that the Board of Education decided to extend the program throughout the school system. As a first step, 12 more junior high schools and 16 elementary schools that channel students to them were chosen. Guidance counselors, remedial teachers and special teams of consultants and demonstrators were assigned to these schools. This new experiment, called "Higher Horizons," differed in two respects from the Demonstration Guidance project. The latter had as its main goal the stimulation of culturally deprived children to seek admission to college. The former, a continuing program,

seeks to improve the potential of all children, slow and average, as well as bright. The "Higher Horizons Program" permits students from low-income families to participate in cultural pursuits that ordinarily would not be available to them. They are stimulated to seek higher education through field trips and other projects designed to broaden their vistas. By 1963, there were 100,000 such students in 76 schools at all levels. When these students reach their senior year, a special effort is made to place the qualified ones in colleges.[67] Also by 1963, the New York City Board of Education set up a remedial education program, conducted in after-school hours, designed to reach 250,000 pupils attending voluntarily.[68] This program has also served as a model for similar efforts in Chicago, Detroit, Philadelphia, Washington, D.C., and Wilmington.[69]

It is evident that the problems raised by de facto school segregation, and by the efforts to eliminate it and its consequences in inferior education for Negro children, are complex and have their roots in the past. The deprivations and discriminations imposed on Negroes in a feudal-peasant Southern society are now being paid for by city-dwellers throughout the country. There are no easy or rapid solutions. Each technique of school desegregation involves some costs, and is seldom completely effective because of housing segregation and the movement of whites to the suburbs. Integration is the only ultimate solution, but before it can be accomplished effectively there needs to be a special effort to overcome the deficiencies in Negro children's education and background. Experiments have demonstrated that at least partial success can be expected from these efforts, but they are expensive if they are to be successful.

V. Efforts to Eliminate De Facto Segregation.

While only rare efforts were made to reduce de facto segregation before 1954, as in Chicago between 1948 and

1952, the Supreme Court decision of that year set off such efforts in one Northern city after the other. The first big push came in New York City, and that city is probably the one which has come the longest way among the large Northern cities. By 1962, the U.S. Commission on Civil Rights reported that "agitation against segregation and discrimination northern style is actively being pursued in 43 cities in 14 Northern and Western States."[70] At first, most of the efforts consisted of protests lodged with school boards, some of which developed into court suits. During the 1960's, organized demonstrations, picketing, sit-ins, and school boycotts became more frequent.[71]

> Englewood, N.J., has had periodic rallies featuring Negro celebrities, sit-ins in the school superintendent's office, picketing of the Governor's office in Trenton, school boycotts, and sit-ins in a white school by Negro children assigned to a nearby Negro school. Negroes have picketed in suburban Philadelphia and in Boston, Chicago, and St. Louis. In Boston, some 3,000 junior and senior high school students stayed out of school for a day and attended workshops in neighborhood churches and social centers where they were instructed in Negro history, U.S. Government and civil rights, and the principles of nonviolence. In St. Louis, 30 parents and ministers blocked the departure from a West End school of 12 buses containing about 500 children who were being transported to under-utilized white schools miles away, where they could attend all-Negro classes. Two weeks later, 2,000 Negroes marched on the board of education headquarters carrying signs saying "Freedom Now" and "Don't Teach Segregation."

The school boycotts and demonstrations in New York and Chicago in early 1944 made national news.

We cannot here trace the results of all these efforts; they have been written about in detail in local newspapers, in school board reports, and in annual reports of the U.S.

Civil Rights Commission.[72] The National Association for the Advancement of Colored People, the leader in instituting court cases, reported that "twelve northern and western public school systems, at the beginning of the 1962-63 school year, desegregated completely or took steps to achieve greater desegregation as the direct result of NAACP activity."[73] Most of these cases of success involved getting school boards—under court order or threat of court case—to abandon policies of gerrymandering, pupil transferring, and site location which were intended to maintain segregation. In some cities, school boards were induced to use one of the positive plans to reduce de facto segregation—division by grades, rezoning, and relocation. In Rochester, New York, and San Francisco, California, the NAACP suits were filed on behalf of both white and Negro parents.[74]

By mid-1963, four states had adopted policies against racially unbalanced schools. New York and California led the way with declarations by the respective State boards of education. New Jersey followed with a similar declaration by the State Commissioner of Education, not supported by his Board but supported by the Governor of the State. Illinois was the fourth state, using a statute as its instrument:[75]

> In June 1963, the Governor signed into law legislation requiring all school boards in the State to review school attendance areas as soon as practicable and to change or revise existing school zones to eliminate segregation in the public schools. The law further requires avoidance of segregation "in erecting, purchasing or otherwise acquiring buildings for the school purposes."[76]
>
> So far as the Commission has been able to determine, the Illinois legislation is the first of its kind to place an affirmative duty on each school board to change existing attendance boundaries in order to prevent segregation in public schools.

Still, Chicago, Illinois, was one of the large Northern cities

which had made the least effort to desegregate after 1953, and it was the scene of many demonstrations and other evidences of community friction in 1963. An advisory panel of five nationally-known persons was appointed by the Chicago Board on August, 28, 1963, and it reported its plan for desegregation on March 31, 1964.

The Chicago plan, yet to be acted upon by the Board at the time of writing, involved thirteen recommendations which sought desegregation without completely abandoning neighborhood schools: (1) School zones would be enlarged to include two or more of the present schools in racial boundary areas, and further registration of pupils when spaces were available might be used to further integration. (2) Free transportation to carry students from overcrowded to under-used schools, and permission to any pupil to transfer to an under-used school when he provides his own transportation. (3) "Factors that would further racial integration should be an important consideration in redrawing district boundaries and in locating new schools." (4) Integration of faculties. (5) No concentration of inexperienced teachers in slum schools by providing incentives for experienced teachers. (6) Development of new teacher training programs for lagging students. (7) Inclusion in curriculum of minority history and human relations materials. (8) Larger supply and textbook budgets for disadvantaged schools. (9) Intensified teaching in basic skills in disadvantaged schools. (10) Improved guidance and counselling services. (11) A crash experimental program in one or more districts that would use a wide variety of new techniques. (12) More funds from local, state and federal sources. (13) Improved school-community communication. This program, if put into practice, would solve most of the racial and poor school problems.

Programs designed to deal with the educational problems of low-income, "culturally deprived" children have

generally been a concomitant of the drive to desegregate schools.[77] We have already described the pioneering Higher Horizons programs of the New York City school system. Stimulated by matching grants from the Ford Foundation, a number of other large city school boards inaugurated comparable programs. These programs are chiefly concerned with remedial instruction, particularly in the language arts, in developing a rapport between the parents and the school, in guidance and counseling, and in providing culturally enriching experiences.

Two states, New York and California, have adopted legislation providing state financial support for local school district initiating and carrying out programs for culturally deprived children in their schools. Upon recommendation of the New York Board of Regents, New York enacted legislation in 1961 "providing for an appropriation of $200,000 a year for each of five years to be distributed as matching special grants to school districts."[78] In the spring of 1963, California became the second state to sponsor compensatory education programs to aid culturally deprived children. The maximum rate of reimbursement is fixed by law at $24 for each child who participates in a program for the entire school year.[79]

Since 1960, a voluntary group in Norfolk, Va., has developed a three-faceted program to raise the educational performance of Negro pupils. One of these, a Higher Horizons type of program, is sponsored and carried out within a Negro junior high school by the faculty of the school. Other volunteer programs have been organized in New Orleans, Philadelphia, Washington, and Chicago.

While all these efforts were going on, it could not be said that the problem of racial imbalance in the public schools was being solved. Some school boards and superintendents were resisting desegregation, but the problem had more basic roots than that. The drastic methods of correct-

ing racial imbalance—voluntary and compulsory transfer, which would be the only effective methods in cities where large segments of the Negro community are geographically isolated from white communities—are used in only a few cities, notably New York and Detroit. These methods are usually strongly resisted because they involve the abandonment of the principle of the neighborhood school. Many Negro leaders and organizations, including the NAACP, do not advocate them—apparently believing that much can be done yet with the less drastic and court-ordered methods of eliminating deliberate segregation, rezoning, relocation, and the Princeton plan, as well as upgrading the quality of education for culturally-deprived children. As these methods are increasingly successful, they run up against the hard-core problem that much de facto school segregation is caused by residential segregation, and that the methods hardly reach those segments of the Negro community in the large cities which are geographically or politically separated from any white community.

One possibility, not yet attempted anywhere, would be to have *all* junior and senior high schools specialize in subject matter, with specially qualified teachers using superior techniques, while offering a minimal program in all other necessary subjects. All children would be required to choose a specialized subject on the basis of interest rather than ability, and to transport themselves to one of the specialized schools where that interest might be furthered. This would not only provide an opportunity for racial integration, but also for superior education. The latter might be an inducement for white parents to overcome their hostility to integrated schools. At the elementary level, the schools would remain on a neighborhood basis, although the neighborhoods might be enlarged and lines not be drawn according to racial boundaries. The main needs for elementary schools are seen to be enrichment, remedial work, and reaching the parents of underprivileged children.

Another drastic proposal, advanced by the New York City Commission on Human Rights, but also not yet seriously considered by any educational authority, would be to create "educational parks." Such a park, centrally located for a large racially mixed area, would typically include six or more elementary schools, three junior highs, and one senior high.[80]

The ultimate solution to the "hard-core" problem of racial imbalance in schools would obviously be residential desegregation. Despite the Supreme Court's 1948 decision that restrictive covenants could not be court enforced, and the introduction since 1958 of an increasing number of "fair housing" statutes and ordinances, plus the presidential order of 1962 restricting government guaranteed loans for segregated housing, residential segregation is decreasing only very slowly. It remains as the major problem of race relations in the North and West. The reasons are many[81]: (1) Restrictive covenants are enforced by private "protective associations" and by the pressure of public opinion. (2) There is the widespread public belief that the entry of Negroes in a neighborhood depresses property values, despite factual evidence to the contrary.[82] (3) Also widespread among the whites are beliefs that the entry of Negroes into a neighborhood lowers the "status" of their white neighbors, and also increases the likelihood of racial intermarriage. (4) Loans for housing in "white" neighborhoods are denied to Negroes, often even when there are government guarantees. (5) Landlords refuse to rent to Negroes in "white" neighborhoods, even where there are "fair housing" laws. (6) Negro real estate agents are often excluded from real estate boards. (7) Negroes moving into the Northern cities from the South continue to move into all-Negro neighborhoods, often by preference. (8) An increasing number of whites in the cities are sending their children to private and parochial schools, which few Negroes can afford to do even if they are not "discouraged" from doing so. (9) Of

greatest significance for the future of residential segregation and of de facto segregation is the trend for whites to move to the suburbs, from most of which Negroes are practically excluded.

Local, state, and federal governments are paying increasing attention to the harmful effects of residential segregation, and a growing number of private groups are working against it. While, as mentioned, residential segregation is gradually decreasing from a peak in the late 1940's, it would be inaccurate to say that the trend is strong enough to allow for a prediction of its disappearance. It will no doubt become the focus of the race conflict in the near future. Upon the outcome of that conflict will depend the future of de facto school segregation.

FOOTNOTES

1. For this almost incredible history, see Louis R. Harlan, *Separate and Unequal: Public School Campaigns and Racism in the Southern Seaboard States, 1901-1915* (Chapel Hill: University of North Carolina Press, 1958).

2. By this logic, it could be said that the 1954 decision did *not* reverse the 1896 decision; the Court merely declared that there were no cases to which the 1896 decision applied, or could apply. What is more significant is that the Court did not order "integration"; it ordered desegregation—that is, the removal of barriers erected by the state and local governments. (Brown *vs.* Board of Education, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L. Ed. 873).

3. Bonita Valien, "Racial Desegregation of the Public Schools in Southern Illinois," *Journal of Negro Education*, 1954 Yearbook Issue, Chapter XII.

4. See: Public Education Association, *The Status of the Public School Education of Negro and Puerto Rican Children in New York City*, October 1955, at p. 16.

5. "De Facto Segregation in the Chicago Public Schools," *The Crisis*, 65:2 (February, 1958), pp. 87-93.

6. Education Committee of the Community Conference of Southern California, Report 21 presented to the U.S. Commission on Civil Rights, January 25-26, 1960.

7. *1961 United States Commission on Civil Rights Report, Vol. 2, Education*, (Washington, D.C.: U.S. Government Printing Office, 1962), pp. 99-100.

8. N.A.I.R.O. Commission on School Integration, *Public School Segregation and Integration in the North*, special issue of the *Journal of Intergroup Relations*, (November, 1963), pp. 13-21.

9. Superintendent of Schools, Kansas City, Missouri, *Report on Progress of Desegregation*, October 15, 1963.

10. Philip M. Hauser, *et al*, "Report of the Advisory Panel to the Chicago Board of Education," Board of Education, City of Chicago, March 31, 1964.

11. As early as 1948, the Chicago public schools were beginning to use the "color-blind" approach, under the leadership of a citizen's committee headed by Professor Louis Wirth of the University of Chicago. Later, with a new superintendent, the Chicago schools became less "color-blind".

12. The most adequate summaries are contained in two unpublished papers prepared for "State of Knowledge Conference" called by New York State Education Department, March 31-April 1, 1964: Thomas F. Pettigrew and Patricia J. Pajonas, "Social Psychological Considerations of Racially-Balanced Schools," whole; and Herman Long "The Meaning of Segregated Education in the North," pp. 19-29.

13. The overcrowding is characteristic of the elementary schools in Chicago. The segregated Negro high schools, however, are often small, as whites living in the district are sent long distances or are put in local "branches" of distant white schools. "De Facto Segregation in the Chicago Public Schools," *op. cit.*, p. 90.

14. *Ibid.*, p. 91.

15. Max Wolff, *op. cit.*

16. The role of the "vicious circle" in keeping Negroes down was first analyzed by Gunnar Myrdal, with the assistance of Richard Sterner and Arnold Rose, *An American Dilemma* (New York: Harper and Bros., 1944), appendix 3.

17. This is reported for Detroit, Michigan, in: *Findings and Recommendations of the Citizens Advisory Committee on Equal Educational Opportunities*, Board of Education of the City of Detroit, 1962: and in "Report of the Committee on Schools," Detroit Commission on Community Relations, August 16, 1963.

18. This is reported for Gary, Indiana, in: Max Wolff, *The Journal of Educational Sociology*, special issue, February, 1963.

19. Letter of Professor James L. Gibbs, Jr., FEPC Commissioner, Minneapolis to the *Minneapolis Morning Tribune*, February 8, 1964, p. 4.

19a. This section is largely taken from the *1961 Report of the United States Commission on Civil Rights, Volume 2, Education*, (Washington, D.C.: U.S. Government Printing Office, 1962), pp. 101-113.

20. 228 F. 2d 853 (6th Cir. 1956), *cert. denied*, 350 U.S. 1006 (1956).

21. 228 F. 2d at 859, *Supra, Note 8.*

22. 165 F. Supp. 87 (E.D. Mich. 1958).

23. *Id* at 90 (Emphasis added.)

24. 191 F. Supp. 181 (S.D.N.Y. 1961). The board argued on appeal that if the lower court's ruling was upheld it "might release a flood of complaints from other minority groups, notably Jewish and Italian." District Judge Irving Kaufman's decision was affirmed by a 2 to 1 decision in the 2nd Circuit Court of Appeals, and further review was denied by the Supreme Court.

25. *Id.* at 192-193.

26. *Id.* at 195.

27. 159 F. Supp. 561 (1957), *aff'd*, 252 F. 2d 898 (ed Cir. 1957), *cert. denied*, 356 U.S. 975 (1958).

28. 252 F. 2d at 901, *supra*, note 15.

29. Henry *vs.* Godsell, *supra*, note 10, at 90.

30. 191 F. Supp. 181 (S.D.N.Y. 1961).

31. Brief for the United States as *Amicus Curiae*, p. 5, the *New Rochelle* case. See also N.Y. Times, May 11, 1961, p. 36. For a full description of the New Rochelle case, see: U.S. Commission on Civil Rights, *Civil Rights USA, Public Schools, Cities in the North and West, 1962.* (Washington: U.S. Government Printing Office, 1962), Section on New Rochelle.

32. *Id.*

33. *Id.*

34. *N.Y. Times*, May 16, 1961, p. 27.

35. Brief of United States, *supra*, note 19, at 9-11.

36. *Id.* at 12.

37. *Id.* at 197.

38. U.S. Commission on Civil Rights, *Civil Rights USA, Public Schools, Cities in the North and West, 1962, op. cit.*

39. Plessy vs. Ferguson, 1963 U.S. 537 (1896).

40. *In the Matter of Skipwith*, 180 N.Y.S. 2d 852 (Dom. Rel. Ct. N.Y.C. 1958).

41. *Id.* at 863.

42. *Id.* at 868.

43. *Id.* at 869.

44. 339 U.S. 629 (1950).

45. *In the Matter of Skipwith*, *supra*, note 28, at 871.

46. *Ibid.*

47. Cf. Burton *vs.* Wilmington Parking Authority, 365 U.S. 715 (1961) where the United States Supreme Court stated: "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be."

48. 96 S.E. 2d 154 (Va. 1957).

49. Bell *vs.* School City of Gary, 213 F. Supp. 819, 829 (N.D. Ind. 1963).

50. In Downs *vs.* Board of Education of Kansas City, Cio. No. KC - 1443, D. Kans., July 9, 1963, the issue was also decided in favor of the school board, as it was in Evans *vs.* Buchanan, 207 F. Supp. 820 (D. Del. 1962).

51. April 20, 1964.

52. Branche *vs.* Hempstead Board of Education, 204 F. Supp. 150 (E.D.N.Y., 1962).

53. Wylie H. Davis, in: U.S. Commission on Civil Rights, *Civil Rights USA, Public Schools, Cities in the North and West, 1962,* p. 298.

54. Jackson *vs.* Pasadena City School District, 382 P. 2d 878, 882 (Calif. 1963).

55. Ralph Blocker *et al vs.* The Board of Education of Manhasset, New York *et al.,* United States District Court, Eastern District of New York, 62-C-285, January 4, 19[illegible].

56. *New York Times,* January 25, 1964, p. 1.

57. Since this survey was completed, the Commission on Law and Social Action of the American Jewish Congress, has published two excellent bulletins summarizing the court cases and the legal principles involved in cases affecting the requirement that boards of education and other school authorities make deliberate efforts to desegregate schools under Northern conditions. These are titled, respectively, "The Courts and De Facto Segregation," and "Applications of Constitutional Principles to De Facto Segregation," and are more comprehensive than our own treatment of the issue.

58. *New York Times,* March 11, 1964, p. 1.

59. For a more detailed description of the New York City "open enrollment" program, see: Will Maslow, "De Facto Public School Segregation," *Villanova Law Review,* 6 (Spring, 1961), pp. 365-8.

60. *New York Times,* November 14, 1963, p. 14.

61. *New York Times,* October 22, 1963, p. 30. The measures of retardation are reading and arithmetic achievement.

62. Quoted in *idem.* Dr. Clark repeated this position in a speech before the American Jewish Committee on November 10, 1963, (*New York Times,* November 11, 1963, p. 35). Another who takes substantially the same position is Inge Lederer Gibel, "How Not to Integrate the Schools," *Harpers* 227 (November, 1963), pp. 57-66.

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